

Background

Following the passage of Proposition 84, the Sierra Nevada Conservancy (SNC) used a transparent public process to develop Guidelines for the awarding of funds allocated to it by the measure. The Guidelines adopted by the Board over the past two years allowed a wide range of projects aimed at meeting the diverse needs in the Region.

The Guidelines have required, among other things that projects must contribute “to the protection or restoration of rivers, lakes and streams, their watersheds and associated land, water, and other natural resources.” This language is taken verbatim from Proposition 84. The Guidelines also require that projects must address one or more the SNC Program areas.

During the course of awarding projects over the last two years, the SNC Board has discussed the appropriate level of support for certain projects that do not directly result in “on the ground projects”, for example certain educational and planning projects. The experience of awarding grants in 2007-08 led to Board to direct staff to include language in the 2008-09 Guidelines stating that “the SNC will award grants with the primary aim of achieving tangible ‘on the ground’ impacts...” At the same time, the Guidelines recognize the value of “activities which prepare for, or create the context for, other natural resource protection and restoration efforts.” Specifically, “educational efforts and community capacity-building” with the Region were identified.

At the December 2008 Board meeting, questions were raised about a number of these types of projects and the appropriateness of using bond funds for this purpose. The discussion centered on whether bond funded projects must in all cases involve a “capital asset” as described in the General Obligation Bond law. After discussion, the Board approved each of these projects (with one exception) with the understanding that such projects were an appropriate use of bond funds. In the case of one project, the Board conditionally approved it with the requirement that the Deputy Attorney General review it in more detail to determine whether it met statutory requirements (that matter is discussed in the Deputy Attorney General’s Report).

The Board also instructed staff to discuss the issue further with the Attorney General’s office and the Department of Finance.

Current Status

SNC staff, in consultation with the Deputy Attorney General, has developed a guidance document -- attachment A of this agenda item. The purpose of this document is to provide the legal framework guiding the types of project appropriately funded using bond funds provided by Proposition 84. The document includes a description of the requirements of the General Obligation Bond Statute, the SNC’s enabling legislation and the relevant sections of Proposition 84 and the manner in which these various authorities are harmonized. The document has been provided to the Department of

Finance, but at the time of the preparation of this staff report follow-up conversations had not occurred. The document also provides descriptions of the types of projects eligible for funding from bond funds.

The conclusion of SNC staff and the Deputy Attorney General is that projects described as eligible in the Guidelines are in fact an appropriate use of bond funds, as discussed in the attachment.

Next Steps

SNC will pursue additional conversations with the Department of Finance on this matter. This guidance will be incorporated into future Guidelines, to the extent appropriate. It should be noted, that Guidelines for 2009-10 are currently intended to provide for some, but not all projects that are allowable under Proposition 84, given the stronger focus on “on the ground” projects. This should not be construed however, as an indication that those projects funded in the past were inappropriately funded with Proposition 84 funds; but rather as a programmatic focus consistent with the SNC mission.

Recommendation

No action is needed by the Board, however comments and further direction to staff is welcome.

Guidance for the Use of Proposition 84 Funds

Background

Proposition 84, passed by voters in November 2006, allocates \$54 million to be available to the Sierra Nevada Conservancy (SNC) for “the protection and restoration of rivers, lakes and streams, their watersheds and associated land, water and other natural resources.” [Sec. 75050 (j).] In 2007, the SNC developed guidelines to be used in the awarding of grants under Proposition 84. The SNC began awarding grants consistent with the guidelines in December 2007.

Through the course of Guideline development and awarding of grants, there have been numerous discussions by the SNC Board relating to allowable use of bond funds as it relates to the SNC grant program. Discussions at the December 2008 Board meeting raised questions regarding applicable requirements for grants using Proposition 84 funds. This document provides clarification with regard to these requirements.

Discussion

SNC’s enabling statutes (PRC 33300 et seq.) set forth the mission of the Conservancy and provide authority to the SNC to carry out its mission. Public Resources Code section 33320 generally directs the Conservancy to work in seven broad program areas. The funding provided for the SNC in Chapter 5 of Proposition 84, however, is directed to “the protection and restoration of rivers, lakes and streams, their watersheds and associated land, water, and other natural resources.” (For ease of reference these resources are referred to herein as watershed resources.) Thus SNC is able to provide grants using Proposition 84 funds for the activities authorized in its enabling statute that also constitute actions for the “protection” and “restoration” of watershed resources, as those terms are defined by Proposition 84.

In addition, use of Proposition 84 funds (and other General Obligation bond funds) is guided by the State General Obligation Bond Law (“GO Bond Law,” Government Code section 16720 et seq.). Generally, that statute specifies that these bond funds may only be used for certain listed purposes, the first of which is the “costs of construction or acquisition of capital assets.” Capital assets are defined by the GO Bond Law in section 16727 to include various things. Under this definition capital assets include tangible physical properties, certain major maintenance and retrofit work, certain equipment, and costs “incidentally but directly related” to construction or acquisition “including but not limited to, planning, engineering, construction management . . . design work, environmental impact reports and assessments, required mitigation expenses, appraisals,” and more. In addition to these “capital asset” projects, the GO Bond Law notes that an individual bond act “may contain provisions applicable to the bonds issued thereunder, and, in case of conflict, the provisions in the bond act shall prevail.” (Government Code Section 16723.)

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Under the SNC grant program, grants that fund acquisition of property or the construction of facilities or improvements to protect and preserve watershed resources (Competitive and SOG 1) meet the test of “capital assets.” This includes projects that encompass fee title land acquisitions, conservation easement acquisitions, buildings or structures appurtenant to these activities, and similar physical types of acquisitions and development. Additionally, projects that accomplish stream or habitat restoration, fire fuels treatment and soil erosion projects qualify for Proposition 84 grant funding under the express provisions of the definitions of “protection” and “restoration” contained in Section 75005 Proposition 84 as defined below:

- Protection means those actions necessary to prevent harm or damage to persons, property or natural resources or those actions necessary to allow the continued use and enjoyment of property or natural resources and includes acquisition, development, restoration, preservation and interpretation.
- Restoration means the improvement of physical structures or facilities and, in the case of natural systems and landscape features includes, but is not limited to, projects for the control of erosion, the control and elimination of exotic species, prescribed burning, fuel hazard reduction, fencing out threats to existing or restored natural resources, road elimination, and other plant and wildlife habitat improvement to increase the natural system value of the property. Restoration projects shall include the planning, monitoring and reporting necessary to ensure successful implementation of the project objectives.

The SNC also funds engineering, site planning, CEQA and permitting expenses, soils analyses and these types of pre-construction or restoration activities, where it is anticipated that the physical project itself will be financed in a subsequent grant round or be funded by other funding sources, but in all events will likely be completed. These are activities recognized in the GO Bond Law as “incidentally but directly related to construction or acquisition” of “capital assets”, and are equally incidentally but directly related to project activities for the protection and restoration of watershed resources expressly authorized by Proposition 84. The definition of “restoration” in Proposition 84 expressly includes, but is not limited to “projects for the control of erosion, the control and elimination of exotic species, prescribed burning, fuel hazard reduction, fencing out threats to existing or restored natural resources, road elimination, and other plant and wildlife habitat improvement to increase the natural system value of the property.”
[Section 75005 subd.(n).]

As mentioned above, the statute also allows for the use of G.O. bond funds in instances and for activities specified by the “provisions applicable to the bonds issued [under a particular bond act]” and provides that in case of conflict with the general GO Bond Law the provisions in the more specific bond act shall prevail. In this regard, Proposition 84, in pertinent part, authorizes SNC to expend bond funds contained in that proposition for the “protection or restoration of watershed resources.” Further, Proposition 84 also

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provides that "...it is the intent of the people that when a project or program is funded herein, funds for such program or project may be used to the full extent authorized by the statute governing the program or conservancy receiving such funds".

Therefore, under its enabling legislation, the General Obligation Bond Law and Proposition 84, projects that result in the protection or restoration of watershed resources are eligible for Proposition 84 bond funding. This includes projects such as those described below:

Project Planning and Preparation

The SNC may fund project planning and preparation activities required to ready a specific acquisition or site improvement project for implementation, such as:

- preparing and completing plans, acquiring permits, completing the environmental review process (CEQA), performing appraisals, performing necessary studies and assessments and developing necessary project designs specific to a particular site or physical project;
- preparing plans and supplementing existing plans that establish a set of specific projects needed to protect or restore watershed resources or that involve collaboration among key stakeholders to target a specific impact or impacts on a specified watershed, that will result in the protection or restoration of watershed resources.

Education/Interpretation

The SNC may fund interpretation projects that meet one or more of the following tests:

- The project will result in a visitor-serving amenity that educates and communicates information about watershed health and/or the significance and value of natural, historical, and cultural resources in a way that increases the understanding and enjoyment of these resources and that may utilize the expertise of a naturalist or other specialist skilled at educational interpretation. (This is the definition of "interpretation" in Proposition 84, and interpretation is part of "protection" as defined in Proposition 84).
- The project will result in the protection or restoration of watershed resources by working to prevent harm or damage to those resources through specific educational activities aimed at actions to modify or eliminate the behavior of relevant target population(s), contributing to those harmful impacts.

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- The education/interpretation activities comprise a small (less than 5%) component of a larger acquisition or site improvement project that will complement or enhance the on-the-ground benefits to watershed resources by the project, and can be viewed as incidentally but directly related to the necessary activities involved in providing watershed protection benefits under Proposition 84 criteria.

Conclusion

Grants that demonstrate clear protection or restoration of watershed resources are an appropriate use of Proposition 84 bond funds. Determining whether a particular activity meets the applicable criteria of Proposition 84 involves discretionary judgment by the Conservancy. The SNC Guidelines provide a process, including evaluation criteria, to guide the making of such determinations.